

## GENERAL DYNAMICS

Mission Systems

### GENERAL PROVISIONS FOR FIRM FIXED-PRICE PURCHASE ORDERS FOR COMMERCIAL SERVICES BEING PURCHASED IN SUPPORT OF A U. S. GOVERNMENT CONTRACT

**1.0 ACCEPTANCE OF ORDER** – Seller shall accept this Order by signing the acceptance copy and returning it promptly to Buyer or by providing the services specified herein. By Seller's acceptance of this Order, Seller agrees to the terms, conditions, and specifications of this Order. Buyer hereby objects to and rejects any terms, conditions, or specifications contained in Seller's acceptance of this Order (or any other form or paper submitted by Seller) which differ from or add to the terms, conditions, and specifications of the Order. Seller agrees that the terms, conditions, and specifications of the Order shall prevail over any inconsistent provisions in any form or other paper submitted by Seller.

#### **2.0 DEFINITIONS** –

- (a) “Buyer” means General Dynamics Mission Systems, Inc., the legal entity issuing this Order.
- (b) “Days” means calendar days unless otherwise expressly noted.
- (c) “Government” means the United States Government.
- (d) “Order” as used herein includes the Firm Fixed-Price Purchase Order, the Schedule, these General Terms and Conditions, any Special Terms and Conditions, any Government Contract Provisions, any plans, any specifications, and other documents incorporated by reference or attached hereto.
- (e) “Service” means the actions provided by the service provider under this Order furnished by Seller to Buyer in performance of and pursuant to this Order.
- (f) “Seller” means the legal entity executing this Order with Buyer and which will furnish the Items provided for herein.

**3.0 WAIVER** – Buyer's failure to enforce any provision of the Order or to protest any breach or default of the Order by Seller shall not be construed as evidence of (or evidence to interpret) the rights or obligations of the parties, or as a waiver of any Seller obligation or Buyer right provided under the Order or by law. No right or remedy of Buyer shall be deemed waived or released unless such waiver or release is in writing and signed by an authorized representative of Buyer.

#### **4.0 DELIVERY**

4.1 **Place of Performance:** Service shall be performed at the location specified on the front page of the Purchase Order. If this procurement is from a source located outside the United States (including the 50 states and U.S. territories or possessions) or from a U.S. based source with foreign manufacturing locations that will ship directly to Buyer in the United States, such shipments are subject to INCOTERMS 2020 DAP or other mutually agreed upon INCOTERMS Rule.

4.2 **Title:** Except as otherwise expressly stated in this Order, title to all Services furnished under this Order shall pass to Buyer upon final acceptance.

#### 4.3 **Delays:**

4.3.1 **Time is of the Essence:** Seller understands that time is of the essence and Buyer depends upon prompt delivery by Seller at the time specified in the schedules furnished by Buyer in order to comply with Buyer's contractual obligations to third parties. Because time is of the essence, on-time delivery is a material condition of this Order and Seller's failure to perform according to the delivery schedule shall be considered a material breach of this Order.

4.3.2 **Prioritization of Buyer's Deliveries:** Seller agrees that except as otherwise required by law or regulation, Buyer's order of Items hereunder shall take priority over any other order from any other Seller customer placed contemporaneously with or subsequent to this Order. Without limiting the foregoing, Seller also recognizes that for Buyer orders issued under the Defense Priorities and Allocation System (“DPAS”), Seller must fully comply with the regulations applicable to the DPAS rating of Buyer's Order, and that failure to do so could result in criminal penalties assessed against Seller by the US Government, in addition to Buyer's own remedies under this Order.

4.3.3 **Notification of Potential Late Delivery:** In the event of a delay or threat of delay, due to any cause, in the production or delivery of Items hereunder, Seller shall immediately notify Buyer in writing of the delay. Seller's notice shall include all relevant information with respect to such delay or threatened delay in sufficient detail to identify the cause of the expected delay and Seller's plan for remediating the issue. In addition, Seller shall certify in such notice that the delay is not the result of a reprioritization of Buyer's order in breach of Section 4.3.2.

4.3.4 Remedies for Late Delivery: If delivery of the Items is not made in the quantities and at the time and manner specified, Buyer shall have the right without liability, and in addition to its other rights and remedies under this Order and the law, to take any of the following actions: (1) direct expedited delivery of Items for which Seller shall bear all premium transportation charges and risk of loss; (2) direct acceleration of Items for which Seller shall bear all premium labor costs and other acceleration costs; (3) delay payment for a period of time equal to the lateness of such delivery or performance; and/or (4) terminate this Order by written notice effective when received by Seller as to the Items not yet delivered, and purchase substitute Items elsewhere and charge Seller with any loss incurred.

4.4 Seller shall comply with the performance schedules but shall not make material or production commitments in advance of such time as Seller reasonably believes is necessary to meet the schedules without Buyer's prior written consent. Except as otherwise expressly provided in the Order, Buyer need not accept any variation in quantity of Service provided by Seller.

4.5 Seller shall not include tracking devices (e.g., AirTag or Tile) in any shipments under this Order.

## **5.0 INSPECTION AND FINAL ACCEPTANCE**

5.1 The final acceptance by Buyer of any Service under this Order shall not limit or affect any warranty or right of indemnity granted by Seller herein. Except as otherwise agreed in writing, all performance under this Order shall be subject to final inspection and acceptance by Buyer. The parties expressly agree that any prior inspection or payment by Buyer will not constitute final acceptance. Buyer's final acceptance of the Service shall take place only after completion of the Service in accord with the schedule specified herein and after final inspection by Buyer. Buyer's final acceptance shall be contingent upon agreement by Buyer that the Service conforms to the applicable Order requirements. Final acceptance by Buyer shall be conclusive, except for latent defects, negligent or intentional misrepresentations by Seller that a nonconformity or defect would be or had been cured, acceptance induced by false or negligent assurances of Seller or as otherwise provided in this Order or applicable law.

5.2 Service performed by Seller and rejected, in whole or in part will be re-performed without any cost to Buyer.

## **6.0 FACILITIES, TOOLS, AND PLANT VISITS**

6.1 Unless otherwise specified herein, Seller shall supply all necessary services, facilities, materials, and equipment (including, but not limited to, tools, test apparatus, etc.). If, in connection with this Order, Buyer furnishes any facilities, materials, equipment, drawings, or other property to Seller, Seller accepts the property "as is, where is." Seller shall maintain such property in good condition and keep the property adequately insured. Seller shall use such property only in performance of work under this Order unless Buyer consents otherwise, in writing. Seller shall assume the risk of, and bear responsibility for, any loss, destruction of, or damage to the property while in Seller's possession or control, unless otherwise agreed in writing by Buyer. Seller shall return all such property in a condition as good as when received except for reasonable wear and tear upon completion of use of such property or at such earlier time as Buyer may request. Seller shall indemnify and hold harmless Buyer and Buyer's Customer from all claims which may be asserted against said property, including, without limitation, claims arising under the Worker's Compensation or occupational injury laws and from all claims for injury to persons or property arising out of or related to Seller's use of such property in performance of this Order.

6.2 During performance of this Order, authorized representatives of Buyer or Buyer's customer shall have the right to visit Seller's facilities involved in the performance hereunder at any time during normal business hours to conduct reviews, monitor, coordinate, or expedite performance and to secure necessary information for such purposes. Such visits will be coordinated with Seller's appropriate personnel to minimize any effect on Seller's normal operations.

## **7.0 TERMINATION**

### **7.1 Termination for Cause**

7.1.1 Buyer may terminate all or any part of this Order by written notice to Seller if: (i) Seller fails to provide Services within the time specified by this Order or any written extension authorized by Buyer; (ii) Seller fails to perform any other provision of this Order or fails to make progress, so as to endanger performance of this Order, and, in either of these two circumstances, does not cure the failure to Buyer's satisfaction within ten calendar days after receipt of notice from Buyer specifying the failure; or (iii) in the event Seller declares bankruptcy, suspends its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors. Seller shall continue Services not terminated.

7.1.2 Buyer shall pay for completed Services performed and accepted in accordance with the prices set forth in the Order. Buyer and Seller shall agree on the amount of payment for in process Services, title to which has been transferred and delivered to Buyer. Failure to agree shall be a dispute and shall be settled under Article 18.0 ("Disputes"). Seller must submit all claims

within sixty calendar days after the effective date of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the Order price. The rights and remedies provided Buyer in this clause are in addition to any other right or remedies provided by law or in equity.

7.2 Termination for Convenience: Buyer may terminate for any reason all or any part of this Order by written notice to Seller. In the event of such termination, Seller shall immediately cease all work terminated hereunder and cause any and all of its suppliers to cease work. Buyer shall have no liability for such termination except for liability for Services actually rendered or expenses actually incurred prior to the effective date of such termination for which payment has not been made. The Seller shall not be paid for any Services performed or costs incurred that reasonably could have been avoided. Failure to agree shall be deemed a dispute and shall be settled under Article 18.0 (“Dispute”). Seller must submit all claims within sixty calendar days after the effective date of termination. In no event shall Buyer be obligated to pay Seller any amount in excess of the Order price. Seller shall continue work not terminated.

7.3 Effect of Termination: Upon any termination of this Order in accordance with this Article 7.0:

7.3.1 Seller shall fulfill Buyer’ existing orders for Services communicated to Seller where a valid Buyer purchase order has been issued to and accepted by Seller prior to Seller’s receipt of Buyer’ written notice of termination, unless otherwise directed by Buyer in said notice. Buyer shall have no obligation to Seller to acquire Services from Seller after Seller’s receipt of the written notice of termination.

7.3.2 In the event of termination, Buyer’s sole financial obligation to Seller shall be to pay for any Services delivered to Buyer consistent with the terms of this Order, in which case payment shall be made within sixty calendar days from Buyer’s receipt of a valid invoice from Seller. Buyer shall have no obligation to Seller for payment of any costs, fees or expenses relating to its exercise of its termination rights hereunder, including but not limited to termination, restocking, demobilization, or any other logistics or administrative fees of any kind.

7.3.3 Seller shall promptly deliver to Buyer (or destroy, if so requested by Buyer) all copies of all Proprietary Information and Materials (in any form or media) then in that Seller’s possession.

7.3.4 All warranties and license rights for any Services provided to Buyer hereunder shall survive termination or expiration, consistent with the terms of this Order.

7.3.5 Within sixty calendar days following termination or expiration of this Order, Seller shall submit to Buyer an itemized invoice of any fees or expenses theretofore incurred under this Order. Buyer upon payment of accrued amounts so invoiced and accepted shall thereafter have no further liability or obligation to Seller for any further fees, expenses or other payments.

## **8.0 REPRESENTATIONS AND WARRANTIES**

8.1 Except as to any items or components thereof which the specifications contained herein specifically provide need not be new, Seller represents and warrants to Buyer that the items and components provided are new (not used or reconditioned) and not of such age or so deteriorated as to impair their usefulness or safety. Seller also represents and warrants to Buyer that all Services furnished under the Order will comply with the requirements of this Order; be free from defects in design (except to the extent of Buyer’s design), material, manufacture, and workmanship; will be free from liens and encumbrance; and, to the extent Seller knows such purpose, will be fit and sufficient for the purpose for which the Service was intended. If the items furnished contain any manufacturer’s warranties, Seller hereby assigns such warranties to Buyer. Seller also represents and warrants to Buyer that all labor provided hereunder shall be performed by qualified personnel, with diligence, and shall conform to the terms, specifications, and description of Service specified by Buyer. Seller further represents and warrants to Buyer that the Service provided under this Order will not infringe upon the rights of any third party. These representations and warranties extend to the future performance of the Service and shall continue for a period of twelve months (or such longer period of time as Seller may warrant similar Service to its most favored customer) following final acceptance by Buyer.

8.2 Buyer shall not be deemed to waive any defects or nonconformity by reason or approval of samples or receipt of, or payment for Service. If Buyer finds through inspection or through use that any Service performed by Seller is other than as warranted above, Buyer may, at its sole option and in addition to any other remedies available to Buyer by this Order or by law direct Seller to correct the Service. Seller shall promptly provide replacement Service in accord with Article 4 (“Delivery”) hereto. Seller shall warrant replacement Services as set forth in this Article 8.0.

8.3 Seller warrants that any service provided under this Order, including, without limitation, subassemblies and spare parts, shall be available to Buyer during the operation life of the items or five years after the date of final acceptance of the Service provided under the Order, whichever is later.

8.4 Seller warrants that the prices, terms of payment, warranties and services extended under this Order are no less favorable to Buyer than those extended to any other Seller customer as in effect on the date of this Order for substantially similar Services. Buyer shall have the right to examine all Seller records and other evidence sufficient to reflect that Seller's representations and warranties are correct and true.

8.5 Services must be in accordance with their stated specifications or GDMS specification and drawing requirements in order to meet product safety requirements. Services must comply with their designed or intended purpose without causing unacceptable risk of harm to persons or damage to property.

8.6 Seller shall ensure that its employees are aware of their contribution to service conformity, their contribution to product safety, and the importance of ethical behavior.

## **9.0 PROPRIETARY INFORMATION AND INTELLECTUAL PROPERTY**

### **9.1 Proprietary Information**

9.1.1 All (a) proprietary and/or trade secret information; (b) tangible items containing, conveying or embodying such information; and (c) tooling identified as being subject to this clause and obtained, directly or indirectly, from Buyer in connection with this Order that are clearly marked as "Proprietary" (collectively referred to as "Proprietary Information and Materials") shall remain Buyer's property and shall be protected from unauthorized use and disclosure.

9.1.2 Seller shall use Proprietary Information and Materials only in the performance of and for the purpose of this Order and shall not disclose Proprietary Information and Materials to any third party. The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Buyer's Proprietary Information and Materials. Upon the completion, termination, or cancellation of this Order, or upon Buyer's request at any time, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived therefrom, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this clause 9.1.

9.1.3 The provisions of this clause 9.1 shall survive the performance, completion, termination, or cancellation of this Order for a period of two years.

### **9.2 Artificial Intelligence**

9.2.1 For the purposes of this Order, "Artificial Intelligence (AI)" means technology that can make decisions or predictions, provide recommendations, create content, or identify patterns without being programmed to do so, an "AI System" means an engineered or machine-based system that can, using a prescribed set of objectives, generate outputs such as predictions, recommendations, or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy.

9.2.2 Seller shall not use, and shall not permit any other third party to use, any Proprietary Information and Materials disclosed by Buyer to Seller to train, validate, update, improve, or modify any of Seller's AI Systems, or other third parties' AI Systems without the prior written modification of this Order executed by authorized representatives of both Parties. Agreement to a proposed modification regarding AI is solely within the discretion of Buyer. Seller shall not export Buyer's Proprietary Information and Materials, including but not limited to, AI Systems, outside of the United States.

### **9.3 Intellectual Property Rights**

9.3.1 "Intellectual Property" shall mean creations of the mind including: ideas, inventions, works of authorship, and symbols, names, images, and designs embodied in for example, technical data, designs, information, computer software, drawings, formulae, specifications, diagrams, processes, know-how, procedures and technology and all legal rights in such creations of the mind.

9.3.2 "Works" shall mean physical manifestations of Intellectual Property created under this Order.

9.3.3 "Background Intellectual Property" shall mean Intellectual Property that is (i) in existence prior to the effective date of this Order or (ii) is designed, developed or licensed by a Party after the effective date of this Order independently of both (A) the work undertaken or in connection with this Order and (B) the Proprietary Information and Materials and Intellectual Property of the other Party to this Order.

9.3.4 "Foreground Intellectual Property" shall mean all Intellectual Property conceived, created, acquired or initially reduced to practice in connection with this Order.

9.3.5 Each Party shall retain and exclusively own all rights in its Background Intellectual Property and in all Foreground Intellectual Property that it creates. Foreground Intellectual Property jointly generated by employees of more than one Party shall be jointly owned. Neither Party shall have any obligation to account to the other Party for income arising from use of the jointly owned Foreground Intellectual Property. Nothing in this clause shall modify or alter any rights that the Government may have in any Items, Works and/or services, including data or software deliverables to the Government.

9.3.6 Seller hereby grants to Buyer a non-exclusive, worldwide, right and license to copy, modify, use, sell, offer for sale and disclose any Item, Works or other deliverable delivered by Seller under this Order for the performance of this Order and any higher tier contract. If the Item or other deliverable contains third party intellectual property, Seller agrees to obtain the rights from the third party that are sufficient for Seller to grant Buyer the rights in the above license. Seller warrants that it has the rights in the Items, Works or other deliverable sufficient to grant to Buyer the above license.

#### 9.4 Intellectual Property Indemnification

9.4.1 Seller shall indemnify, defend, and hold harmless, Buyer and Buyer's Customer and their respective officers, directors, agents, and employees against liability and losses including without limitation, defense costs and attorneys' fees, for any allegation of or suit or action for infringement of any United States or foreign patent, copyright, trademark, or other intellectual property right arising out of the manufacture or delivery of an Item under this Order or out of the use or disposal of such Item by or for the account of Buyer. Seller shall at its own expense either procure for Buyer and/or Buyer's Customer the right to continue using the alleged infringing Item, replace it with non-infringing Item, or modify it so that it becomes non-infringing. The foregoing indemnity shall not apply unless Buyer or Buyer's Customer informs Seller of the suit or action or other proceeding alleging infringement and gives Seller the opportunity as is afforded by applicable laws, rules, or regulations, to participate in the defense thereof.

9.5 For as long as a separate non-disclosure agreement (NDA) or similar agreement which addresses the subject matter of clause 9.1 or 9.2 is in force between Buyer and Seller, such NDA shall control in the case of any conflict between such NDA and clause 9.1 or 9.2 of this Order.

### 10.0 TRANSFER/ASSIGNMENT AND SUBCONTRACTING

10.1 No right or interest of Seller or Buyer hereunder or arising out of this Order may be assigned or transferred, whether by operation of law or otherwise, and/or all or substantially all of its performance of this Order without the prior written consent of Buyer or Seller, respectively, which shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer may assign this Order without Seller's consent to a successor company resulting from a restructuring, consolidation, merger or other combination within General Dynamics. Seller shall not delegate any of its duties or obligations under this Order. Seller may assign its right to monies due or to become due. No assignment, transfer, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Order or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment or transfer. This article does not limit Seller's ability to purchase standard commercial supplies or raw materials. Any unauthorized transfer or assignment is void.

10.2 Seller shall include in each lower-tier subcontract all applicable requirements including Buyer's customer requirements where applicable.

**11.0 CHANGES** - The Parties shall mutually agree to any changes in writing.

**12.0 CONTROL OF BUYER INFORMATION, DATA, DESIGN, ARTICLES, SCRAP, ETC.** - Seller shall not, without first obtaining Buyer's written permission, in any manner advertise or publish the fact that it has furnished or has contracted to furnish Buyer with the Service herein ordered, nor disclose any of the details connected with this Order to any third party.

**13.0 NOTICE** – Any notices required or permitted to be given hereunder shall be in writing and shall be deemed to be duly given when received if sent by mail to each party's address as stated on this Order, or when delivered by hand or by facsimile transmission if the transmittal report indicates that the facsimile was sent successfully.

### 14.0 COMPLIANCE WITH LAWS

14.1 **United States Law:** Seller, at its sole expense, shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations which may be applicable to the Item and Seller's performance under this Order, including, without limitation, all laws, regulations, and rules related to the safety and conditions of each job site, including but not limited to those promulgated or prescribed pursuant to the Occupational Safety and Health Act of 1970, and any amendment thereto. Seller agrees to comply with any applicable provisions of the Rehabilitation Act of 1973, the Veteran's Readjustment Act of 1974, and

implementing regulations of the U.S. Department of Labor, which embody governmental policy on equal employment opportunity. To the extent applicable: **Buyer and Seller shall abide by the requirements of 41 CFR 60–300.5(a) and 60–741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.** Seller also agrees that in connection with activities under this Order it shall not make or promise to make any improper payments, or provide or offer to provide anything of value, directly or indirectly, to government officials or other parties in violation of the Foreign Corrupt Practices Act or other applicable anti-bribery laws.

14.2 Foreign Corrupt Practices Act and Anti-Bribery Laws: Seller agrees to comply with the Foreign Corrupt Practices Act, the UK Bribery Act of 2010, and all applicable anti-bribery laws. Seller specifically represents and warrants that, in connection with the performance of its activities under this Order, neither it, nor anyone acting on its behalf, has or will, directly or indirectly, offer, pay, promise to pay, or authorize the giving of, any money or thing of value to any Government Official or to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a Government Official, for the purpose of influencing any act or decision of such Government Official, including any act or decision to fail to perform his/her lawful duty, or for the purpose of inducing such Government Official to use his/her influence with any government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality to obtain or retain business for any person. “Government Official” means any officer, employee, agent, representative, or any other person acting in an official capacity for or on behalf of a government, government-owned or –controlled entity or instrumentality, public international organization, political party, party official or political candidate.

#### 14.3. Compliance with Export Control Laws and Regulations

14.3.1 Seller, at its sole expense, shall comply with all applicable U.S. export control laws and regulations in the performance of this Order, including, but not limited to, the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 to 130, the Export Administration Regulations (EAR) 15 CFR Parts 730 through 799, and with all other laws, regulations, or executive orders of the United States related to the import, export, or delivery of Services contemplated by this Order such as customs laws and regulations, immigration laws and regulations, etc.

14.3.2 Seller, at its sole expense, agrees to determine and comply with all export license requirements, to obtain any export license or other official authorization, and to carry out any customs or immigration formalities or similar requirements for the export of any Services covered by this Order. Seller also hereby expressly agrees to bear sole responsibility for obtaining export licenses, if required, before utilizing foreign persons (as defined in 22 CFR § 120.16) in the performance of this Order, including instances where the work is to be performed on-site at any Government installation, where the foreign person will have access to export-controlled technical data, equipment or software. Seller also agrees to bear sole responsibility for all regulatory record keeping associated with the use of licenses and license exemptions/exceptions.

14.3.3 Seller shall insert the substance of this clause in any lower-tier subcontracts it enters into in connection with this Order.

14.4. Compliance with International Laws: If Seller is located outside the United States or any Service ordered hereunder will be produced or performed outside the United States, the following provisions also shall apply:

14.4.1 Compliance with Foreign Laws and Regulations: In addition to complying with all applicable federal, state, and local laws, regulations, and rules as set forth in this Article 14, Seller, at its sole expense, shall comply with all applicable foreign laws, regulations, and rules or agreements governing or applicable to Seller's Service under this Order.

14.4.2 Hazardous Activities, Waiver, and Insurance: Seller acknowledges that the international nature of the Service required under this Order may subject Seller and its employees and lower-tier subcontractors to increased personal safety and property risks and other risks, hazards, and potential liabilities. Seller knowingly and voluntarily accepts sole responsibility, financially, and otherwise, for all risks, hazards, and liabilities associated with any international performance under this Order. Seller also hereby releases and waives all claims of any sort that it may have in the future against Buyer or its successors, assigns, affiliates, parents, subsidiaries, or agents arising from or related to risks, hazards, or liabilities associated with any international performance under this Order. In addition to its other indemnification obligations under this Order, Seller agrees that it shall indemnify and hold harmless Buyer from and against any and all liability, damages, costs, and expenses (including defense costs and attorneys' fees) arising from or related to any suit, action, claim, or proceeding filed against Buyer by one or more of Seller's employees or lower-tier subcontractors related to any risk, hazard, or liability addressed in this Section 14.3.2. Seller also agrees that, in addition to the foregoing indemnification agreement and any insurance required elsewhere in this Order, Seller, at its sole expense, shall, during the term of this Order, provide and maintain at reasonably adequate levels, workmen's compensation, comprehensive general liability, bodily injury, and any other insurance necessary to fully and adequately cover all reasonably foreseeable risks, hazards, and potential liabilities of any kind related to Seller's performance of this Order wherever performed.

All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. If specifically requested by Buyer, Seller and Seller's subcontractors shall furnish, prior to the start of Service, certificates or adequate proof of the foregoing insurance, including, without limitation, endorsements and policies. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interest of Buyer or Buyer's Customer shall not be effective until thirty calendar days after the insurer or Seller gives written notice to Buyer, whichever period is longer. Insurance companies providing coverage under this Order must be rated by A. M. Best with at least an A-rating. Seller's obligation to obtain the foregoing insurance does not waive or release Seller's liabilities or duties to indemnify under this Order.

14.4.3 Taxes and Fees: Seller shall have sole responsibility for, and pay without reimbursement from Buyer, all foreign sales, value added, employment, transportation, business, income and any other taxes, duties, levies, tariffs, fees, and assessments of any sort applicable or related to any Service performed under this Order unless this Order specifically states otherwise.

14.4.4 Effect on Other Provisions: Nothing in this Article 14.0 shall relieve Seller from complying with any other Article of this Order.

14.4.5 Use in Lower-Tiered Subcontracts: Seller shall include the substance of this Article 14.0 in any lower-tier subcontracts it enters in connection with this Order.

**15.0 INDEMNIFICATION BY SELLER** – Seller agrees to indemnify, defend and hold harmless Buyer, its affiliates, subsidiaries, directors, officers, employees and agents from and against any and all third-party actions, causes of action, liabilities, claims, expenses (including reasonable attorneys' fees and court costs), losses, damages, penalties, fines, forfeitures, suits, judgments, liens, awards and damages of any kind and nature whatsoever for (a) property damage, (b) personal injury, including death, and (c) all violations of applicable laws, and (d) breaches of Seller's or any of its suppliers' obligations arising from this Order. Seller's obligation hereunder is not limited to insurance available to or provided by Seller or any of its suppliers. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or common law, to the extent of the indemnity set forth in this Article 15.0. This duty to defend, indemnify, and hold harmless extends to any suit, liability, claim, judgment, or demand that may arise out of or in connection with the performance or nonperformance of this Order by Seller or its agents, breach of warranty by Seller or its agents, any defective Item performed or delivered by Seller or its agents, any patent infringement or misappropriation of trade secrets by Seller or its agents, any failure of Seller or its agents to pay royalties, any assertion under workers' compensation or similar acts by persons furnished by Seller or its agents, or any other breach of Seller's obligations hereunder, whether such suit, liability, claim, judgment, or demand is based upon contract, warranty, strict liability in tort, negligence, or other legal theory, and extends not only to "third party claims" but also to any direct loss suffered by Buyer. Buyer will inform Seller of any claim, demand, judgment, or suit asserted or instituted against it to which this provision may apply. "Agents" as used herein includes, but is not limited to, Seller's employees, subcontractors, and suppliers.

**16.0 INSURANCE** – Unless otherwise specified by Buyer in writing, Seller shall maintain and cause Seller's subcontractors to maintain during the term of this Order (a) workers' compensation insurance as prescribed by the law of the state or nation in which the Service is performed; (b) employer's liability insurance with limits of at least \$2,000,000 for each occurrence; (c) automobile liability insurance if the use of motor vehicles is required hereunder, with limits of at least \$2,000,000 combined single limit for bodily injury and property damage per occurrence; and (d) Commercial General Liability ("CGL") insurance, ISO 1988 or later occurrence form of insurance, including, without limitation, Blanket Contractual Liability and Broad Form Property Damage, with limits of at least \$2,000,000 combined single limit for bodily injury and property damage per occurrence. For each type of insurance required by Buyer, Seller's corresponding line of coverage may be supplemented by Seller's umbrella insurance coverage to meet Buyer's minimum coverage requirement. Seller is required to provide Buyer with written notification of any claims made against Seller's umbrella coverage. All CGL and automobile liability insurance shall designate Buyer, its affiliates, and its directors, officers, and employees (all referred to as "Buyer") as additional insured. All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available. If specifically requested by Buyer, Seller and Seller's subcontractors shall furnish, prior to the start of Service, certificates or adequate proof of the foregoing insurance, including, without limitation, endorsements and policies. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interest of Buyer or Buyer's Customer shall not be effective (1) for such period as the laws of the State in which this Order is to be performed prescribe or (2) until thirty calendar days after the insurer or Seller gives written notice to Buyer, whichever period is longer. Any other coverage available to Buyer shall apply on an excess basis. Seller agrees that Seller, Seller's insurer(s) and anyone claiming by, through, under or in Seller's behalf shall have no claim, right of action or right of subrogation against Buyer and Buyer's Customer based on any loss or liability insured against under the foregoing insurance. Insurance companies providing coverage under this Order must be rated by A. M. Best with at least an A-rating. Seller's obligation to obtain the foregoing insurance does not waive or release Seller's liabilities or duties to indemnify under this Order.

**17.0 GRATUITIES AND CONTINGENT FEES PROHIBITED** - Seller warrants and agrees that it will comply with Buyer's policy providing that Buyer's employees and agents accept no gratuities or gifts from its vendors. Seller also warrants and agrees that it will comply with the Anti-Kickback provisions of 41 U.S.C. §§ 51 to 58. In addition to its other remedies

provided by law or this Order, Buyer shall have the right to deduct from the Order price the full amount of any gift or contingent fee made by Seller in breach of these warranties and may terminate this Order for default for breach of these warranties by Seller. Seller also agrees to indemnify and hold harmless Buyer for any claims, loss, damage or expense (including, without limitation, attorneys' fees), resulting from a breach of these warranties by Seller.

## **18.0 DISPUTES**

18.1 "Dispute" as used herein shall mean (i) any and all claims or disputes that in any way arise out of or relate to this Order, the negotiation or execution thereof, its performance, or the breach or enforcement thereof; (ii) any claims or disputes that in any way concern the conduct of any party in connection with this Order or the relationship or duties of the parties contemplated under this Order; or (iii) claims or disputes concerning the validity or scope of the terms and conditions of this Order (including, but not limited to, this Article 18.0). Buyer and Seller intend that the definition of "Dispute" shall have the broadest scope permitted by law and that, without limiting the generality of the foregoing, shall be deemed to include all claims between the parties, including, but not limited to, any claims for fraud, misrepresentation, negligence, libel and slander, misuse or theft of trade secrets or other confidential information, unfair competition, unfair trade practices, or other tort law claims.

18.2 The parties agree that any Dispute between them or against any agent, employee, successor, or assign of the other shall be settled, to the extent possible by good faith negotiations. Any Dispute which the parties cannot resolve by good faith negotiations within thirty calendar days or such longer period as the parties may mutually agree to shall be submitted and finally resolved by a court of competent jurisdiction.

18.3 Until final resolution of any Dispute hereunder, Seller shall proceed diligently with the performance of this Order unless otherwise directed by Buyer in writing.

18.4 Buyer's rights under the terms and conditions of this Order are cumulative and in addition to any other rights available at law or equity.

18.5 Seller is expressly precluded from filing a direct claim or direct cause of action against the U. S. Government as a result of this Order.

**19.0 LIMITATION OF LIABILITY** – IN ADDITION TO ANY OTHER LIMITATIONS ON BUYER'S LIABILITY SET FORTH HEREIN, IN NO EVENT SHALL BUYER, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE BY REASON OF BUYER'S BREACH OR TERMINATION OF THIS ORDER OR FOR ANY BUYER ACTS OR OMISSIONS IN CONNECTION WITH THIS ORDER FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, SERVICE INTERRUPTION, OR ANY CLAIMS OR DEMANDS AGAINST SELLER BY ANY OTHER ENTITY, WHETHER SUCH REMEDY IS SOUGHT IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. IN NO EVENT SHALL BUYER'S LIABILITY FOR DAMAGES IN ANY CIRCUMSTANCES SET FORTH IN THIS CLAUSE EXCEED THE PRICE PAYABLE FOR THE SERVICE TO BE PERFORMED BY SELLER UNDER THE ORDER. THIS ORDER SHALL NEITHER CREATE FOR NOR GIVE TO ANY THIRD PARTY ANY CLAIM OR RIGHT OF ACTION AGAINST SELLER OR BUYER WHICH WOULD NOT OTHERWISE ARISE WITHOUT THIS ORDER.

**20.0 GOVERNING LAW and VENUE** – Buyer and Seller agree that this Order shall be deemed to have been executed and delivered within the State of New York and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by the laws of the State of New York without regard to conflict of laws rules. The United Nations Convention on the International Sale of Goods shall not apply. All claims or disputes arising under or in any way related to this Order, including those relating to the validity of this Order, which cannot be resolved by the Parties through negotiations within thirty calendar days or such longer period of time as may be mutual agreed in a written document that is signed by a duly authorized representative of each Party shall be resolved by the state or federal courts. Venue for any action brought under or relating to this Order shall exclusively be in a state or federal court of competent jurisdiction in the State of New York. The parties hereby irrevocably waive any right to challenge such venue on the basis of forum non conveniens or otherwise. The Parties further agree and consent to accept service of process by certified or registered United States mail, return receipt requested, addressed as provided herein. In the event that an action is commenced by either Party with respect to this Order, the substantially prevailing Party shall be entitled to recover its costs and attorneys' fees from the other Party. THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS ORDER. Buyer and Seller also agree that the provisions of the New York Uniform Commercial Code shall apply to this Order and all Disputes, regardless of whether the subject matter of this Order relates to the provision of services, the lease of rental equipment or material, or the license of software. Notwithstanding the foregoing or anything herein to the contrary, for matters where the dispute between the Parties is based upon a decision made by the U.S. Government and/or the U.S. Government may become a party to the proceedings, this Order shall be governed by and construed in accordance with United States federal law and the U.S.

Federal Courts shall have exclusive jurisdiction over any such claim arising under this Order.

**21.0 SEVERABILITY** – In the event any provision or clause of the Order conflicts with governing law or if any arbitration panel or court of competent jurisdiction holds invalid any provision or clause of the Order, such provision or clause shall be deemed to be modified to reflect as nearly as possible the parties' intent. The remainder of the Order shall remain in full force and effect.

**22.0 SURVIVAL** – The provisions of the Order, which by their very nature would continue beyond the termination, cancellation, or expiration of the Order, including, without limitation, Articles 8.0, 9.0, 12.0, 14.0, 15.0, 18.0, 19.0, 20.0, and 21.0, shall continue as valid and enforceable rights and obligations of the parties and survive termination, cancellation, or expiration of the Order.

**23.0 ORDER OF PRECEDENCE** – The rights and obligations of the parties shall be subject to and governed by the Order. In the event of an inconsistency between the provisions of the Order, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order from the highest to lowest degree of precedence: (1) The FAR/DFARS, (2) Government Contract Provisions, if any, (3) Typed Provisions in the Schedule of this Order; (4) Special Provisions or Terms and Conditions, if any; (5) General Terms and Conditions of Purchase; (6) Specifications, drawings, statement of work, or other attachments or documents incorporated by reference.

**24.0 PRICE** – The prices set forth in this Order cover all Services delivered or performed by Seller to satisfy the requirements of this Order. Buyer will not be liable for extra charges of any kind unless specifically agreed to in writing by Buyer.

**25.0 TAXES** – The prices in this Order include, and Seller shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Order, except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

## **26.0 PAYMENT**

26.1 Certificate of Compliance: A signed certificate of compliance, signed by an authorized representative of Seller's Quality Department, must be submitted with each invoice certifying that the Service delivered is of the quality specified and conforms in all respects with the Order requirements.

26.2 Payment: Payment of each properly submitted invoice shall be made by Buyer within sixty calendar days following receipt of each invoice, provided however, that the Buyer may withhold an appropriate portion of the payment until any disputed items are resolved and/or defects in the Service are corrected. Payment by Buyer shall be deemed to have been made for the purpose of meeting the sixty calendar day requirement on the date Buyer deposited the payment in the mail or made the electronic funds payment. Final payment shall not release Seller from any warranty and indemnification provisions contained in this Order.

26.3 Records: Seller shall maintain, for a period of two years following the expiration or termination of this Order, accurate records of all matters that relate to its performance of the Service, including, without limitation, all records and backup associated with invoices that have been submitted to Buyer, and shall make such records available to Buyer and its representatives for audit and inspection.

**27.0 INDEPENDENT CONTRACTOR** – It is the intention of Buyer and Seller that for all purposes Seller is and shall be an independent contractor and the sole employer and/or principal of any and all persons assigned by Seller to provide services under this Order. Seller is obligated to perform all requirements of an employer under federal, state, and local laws and ordinances (or foreign law, if applicable). Such compliance shall include, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers' compensation insurance. Seller, not Buyer, is the "common law employer" within the meaning of Treas. Reg. § 31.3401(c)-1(c) of employees of all persons assigned by Seller to provide services under this Order. Under no circumstances shall Seller or its employees or agents be construed to be employees, representatives, or agents of Buyer for any purpose, including but not limited to record keeping obligations under state or federal OSHA and Worker's Compensation Laws. Seller's employees and agents shall not be entitled to participate in the profit sharing, pension, or other plans established for the benefit of Buyer's employees. If required by federal or state law, Seller agrees to comply with the Family and Medical Leave Act ("FMLA") for its employees and agrees that with regard to such employees, it is the primary employer as defined by the FMLA regulations.

**28.0 SUSPENSION/STOP WORK** – Buyer may at any time by written order to Seller require the Seller to stop all, or any part of the Service called for by this Order for a period of up to 100 days. After receipt of Buyer's notice, Seller shall stop Service in accord with the terms thereof, taking all reasonable steps to minimize the incurrence of costs allocable to the Service covered

by the Order during the period of Service stoppage. Within said 100-day period, or a longer period if agreed to by the parties in writing, Buyer shall either terminate the Order under Article 7.0 or cancel the stop work order by written direction to Seller to continue the Service.

## 29.0 SERVICE PERFORMED ON BUYER PREMISES OR ACCESS TO BUYER'S INFORMATION SYSTEMS

29.1 If this Order involves work by Seller on the premises of Buyer, Seller shall comply with and take all precautions required by any safety and security regulations and Buyer internal policies or procedures to prevent the occurrence of any injury to person or property during the performance and progress of such Service. Seller shall promptly notify Buyer of any such injury or damage. In addition to any other indemnification obligations in this Order, Seller hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever to all persons, whether employees of Seller, or otherwise, and to all property, caused by, resulting from, or arising out of Seller's negligence or that of its agents or employees when performing work on the premises of Buyer.

29.2 Seller shall at all times enforce strict discipline and good conduct among its employees, and shall not employ in connection with the services covered by this Order any unqualified or unfit person or anyone not skilled in the work assigned to him or her. Seller also agrees that any employee, subcontractor, or agent provided under this Order to Buyer will abide by and perform in accordance with the employment policies of Buyer, which address mandatory internal dispute resolution of all covered claims, sexual and other unlawful harassment, drug and alcohol abuse, and equal employment opportunity. Seller shall indemnify and hold Buyer harmless against any liability arising from a violation of such policies by Seller's employee, subcontractor, or agent. In addition to any other remedies available to Buyer, Buyer may, without notice and an opportunity to cure, expel from its property/worksites, or the property or worksite of Buyer's Customer(s), any employee, subcontractor or agent of Seller found violating any Buyer policy.

29.3 Seller must receive written permission from Buyer before storing any materials upon the premises or constructing any temporary workshop or other apparatus on the premises. Seller agrees to keep the premises free from accumulations of waste material or rubbish caused by its employees, subcontractors, or agents during performance, and at the completion of performance, Seller shall remove from the premises all rubbish, implements, and surplus materials and leave the premises broom clean, unless otherwise instructed by Buyer. Seller shall properly store all loose tools and materials.

29.4 Prior to Buyer issuing any "No-Escort" badges to Seller's employees performing work in the operating areas of Buyer's premises or facilities for a period of 45 days or more within a 365 day period, or having any access to Buyer computer information systems for any period of time, Seller, shall, at its own expense, obtain a Background Investigation (BI) on the Seller's employee in accordance with standards established by Buyer's Security Organization.

29.5 Seller further understands that Buyer is a defense contractor providing Work for the United States Government, and as such, is under certain mandatory security obligations with regard to access to its facilities and technology. Due to the fact that disclosure of certain information to any individual may be deemed an export, Seller agrees that it will not assign any worker (including the Seller him or herself) to perform services under this Order (including but not limited to accessing Seller's web based portal for the applicable program) unless that person qualifies as a "U.S. person," defined as:

- i. U.S citizen;
- ii. U.S. nationals, including an alien lawfully admitted for permanent resident (those possessing a valid Form I-551); or
- iii. Asylee or refugee as defined in 8 U.S.C. 1324(b)(a)(3)

## 30.0 FORCE MAJEURE

30.1 Neither Party shall be liable for any excess costs or other damages if the failure to perform arises out of causes beyond the reasonable control and without the fault or negligence of the party alleging an event of Force Majeure. Force Majeure causes may include, but are not limited to (a) acts of God or of the public enemy, (b) war (whether an actual declaration thereof or not), (c) acts of terrorism or threats thereof, (d) acts of the U. S. Government in either its sovereign or contractual capacity, (e) sabotage, (f) insurrection, (g) riot or other act of civil disobedience, (h) atmospheric disturbances, (i) fires, (j) floods, (k) plagues or epidemics, (l) quarantine restrictions, (m) labor disputes or strikes, (n) failure or delay in transportation due to transportation workers strike or freight embargoes, (o) worldwide parts shortage(s) or rationing allocations, (p) shortage of labor, fuel, raw material or machinery, or (q) violent storms or unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the party. For delays in delivery of an Item, Seller must make best efforts to avoid or reduce the effects of a Force Majeure event and in no instance may Seller reprioritize deliveries among its customers in breach of Section 4.4.2. Seller shall notify Buyer in writing within ten calendar days after it becomes aware of any such cause. If the original delivery schedule is overcome by the Force Majeure event then the Parties agree to negotiate in good faith a revised delivery schedule.

30.2 Should either Party be unable to fulfill a material part of its obligations under an Order for a period in excess of sixty

calendar days due to circumstances beyond its reasonable control as described above, the other Party may at its sole discretion terminate the Order by written notice. Upon either resolution of the Force Majeure event or termination as described, the Parties shall proceed in good faith to negotiate a termination settlement proposal covering the performance of the Order performed prior to the effective date of the termination.

**31.0 SUBSTITUTION** – Seller agrees not to substitute materials or other components of Service without written consent by Buyer.

**32.0 CERTIFICATION OF AUTHENTICITY AND TRACEABILITY** - Seller certifies to Buyer that all material furnished under this purchase order is genuine, new and unused. Seller certifies that all material is traceable to the point of manufacture and that complete material pedigree is known and can be furnished to Buyer upon request. Seller will have a documented procedure that defines the method for controlling records that are created by and /or retained by Seller. The Seller shall notify Buyer thirty calendar days prior to the destruction or disposal of records associated with this order. Seller certifies that Seller will not provide to Buyer (without Buyer's prior written consent) any goods or items under this Order incorporating (at any tier in the supply chain) any materials, excluding COTS Items, exported from Russia or China. For the purpose of this Order, "COTS Item" means any item of supply (including construction material) that:

- (a) Is a product that is of a type customarily used by the general public for non-governmental purposes;
- (b) Has been sold in substantial quantities in the commercial marketplace; and
- (c) Was acquired by the importer (i.e., Seller or its sub-tier supplier), without modification, in the same form in which it is sold in the commercial marketplace.

### **33.0 COUNTERFEIT PARTS PREVENTION**

#### **33.1 DEFINITIONS**

33.1.1 Authentic shall mean (A) genuine; (B) purchased from the Original Equipment Manufacturer ("OEM"), Original Component Manufacturer ("OCM") or through the OEM's/OCM's authorized dealers; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.

33.1.2 Authorized Dealer - A dealer or distributor that purchases directly from the OEM or OCM and is authorized or franchised by the OEM or OCM to sell or distribute the OEM's/OCM's products.

33.1.3 Counterfeit Part - A part that is an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized part of the legally authorized source. This definition includes used parts represented as new parts.

33.1.4 Original Component Manufacturer (OCM), Original Equipment Manufacturer (OEM) - An organization that designs and/or engineers a part or equipment and is pursuing or has obtained the intellectual property rights to that part or equipment.

33.1.5 Non-Franchised Source - Any source that is not authorized by the OEM or OCM to sell its product lines. Non-franchised sources may also be referred to as brokers or independent distributors.

33.1.6 Suspect Counterfeit Part - A part that Buyer becomes aware, or has reason to suspect, meets the definition of "counterfeit part", as defined above. For purposes of this document, the terms "counterfeit part" and "suspect counterfeit part" will be used interchangeably. If any individual part from a lot is determined to be counterfeit or suspect counterfeit, the entire lot of parts will be considered to be suspect counterfeit.

#### **33.2 TERMS AND CONDITIONS**

33.2.1 Seller represents and warrants that only new and authentic materials (including embedded software and firmware) are used in products required to be delivered to Buyer and that the Service provided contains no Counterfeit Parts. No material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by Buyer. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from the Original Equipment Manufacturers ("OEMs"), Original Component Manufacturers ("OCMs") or through the OEM's/OCM's authorized dealers. Seller represents and warrants to Buyer] that all parts/components delivered under this Order are traceable back to the OEM/OCM. SELLER must maintain and make available to Buyer at Buyer's request, within 10 business days, OEM/OCM documentation that authenticates traceability of the parts/components to the applicable OEM/OCM. Purchase of parts/components from Non-Franchised Sources is not authorized unless first approved in writing by Buyer. Seller must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus

procured are legitimate parts. Buyer's approval of Seller request(s) does not relieve Seller's responsibility to comply with all Order requirements, including the representations and warranties in this Section 33.2.

33.2.2 Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and Buyer's approval before parts/components are procured from sources other than OEMs/OCMs or the OEM's/OCM's authorized dealers. Seller shall provide copies of such documentation for its system for Buyer's inspection upon Buyer's request.

33.2.3 Seller must maintain a counterfeit detection process that complies with SAE standard AS5553, Counterfeit Electronic Parts, Avoidance, Detection, Mitigation, and Disposition.

33.2.4 If it is determined that counterfeit parts or suspect counterfeit parts were delivered to Buyer by Seller, the suspect counterfeit parts will not be returned to the supplier. Buyer reserves the right to quarantine any and all suspect counterfeit parts it receives and to notify the Government Industry Data Exchange Program (GIDEP) and other relevant government agencies. Seller shall promptly reimburse Buyer for the full cost of the suspect counterfeit parts and Seller assumes responsibility and liability for all costs associated with the delivery of suspect counterfeit parts, including, but not limited to, costs for identification, testing, and any corrective action required to remove and replace the suspect counterfeit parts. The remedies in this Article 33.0 shall apply regardless of whether the warranty period or guarantee period has ended, and are in addition to any remedies available at law or in equity.

33.2.5 If the procurement of materials under this Order is pursuant to, or in support of, a contract, subcontract, or task order for delivery of goods or services to the Government, the making of a materially false, fictitious, or fraudulent statement, representation or claim or the falsification or concealment of a material fact in connection with this Order may be punishable, as a Federal felony, by up to five years' imprisonment and/or substantial monetary fines. In addition, trafficking in counterfeit goods or services, to include military goods or services, constitutes a Federal felony offense, punishable by up to life imprisonment and a fine of fifteen million dollars.

33.2.6 Seller shall flow the requirements of this Article 33.0 ("COUNTERFEIT PARTS PREVENTION") to its subcontractors and suppliers at any tier for the performance of this Order.

#### **34.0 CONFLICT MINERALS**

34.1 Seller represents that, regardless of whether Seller is publicly traded or not, Seller does not procure Conflict Minerals from Covered Countries, as those terms are defined by and consistent with the Securities and Exchange Commission's final rule on Conflict Minerals, 17 CFR Parts 240 and 249(b), promulgated pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. (the "Rule").

34.2 Seller represents and warrants that all products that will be delivered to General Dynamics by Seller under this Order are Democratic Republic of the Congo (DRC) Conflict Free, as defined by and consistent with the Rule, including "Adjoining Countries." "Adjoining Countries" are Angola, Burundi, Central African Republic, the Republic of Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia.

34.3 Seller agrees that, if required by the Rule, it has made, and will continue to make, good faith inquiries reasonably designed to determine whether any Conflict Mineral that is included in any Service delivered to General Dynamics pursuant to this Order originated in the DRC or an Adjoining Country, or is from Recycled or Scrap Sources, as defined in the Rule. Seller further agrees that, if required by the Rule, it has performed, and will continue to perform, due diligence on the source and chain of custody of any Conflict Mineral that is included in any product delivered to General Dynamics pursuant to this Order, and that such due diligence conforms to a nationally or internationally recognized due diligence framework, if such a framework is available for the Conflict Mineral. Seller agrees that all inquiries and diligence performed shall be consistent with the requirements of the Rule.

34.4 Seller agrees that it shall require its own subcontractors and suppliers (at any tier in the supply chain for a product delivered to General Dynamics under this Order) to furnish information to Seller necessary to support Seller's obligations under this Article 34.0.

34.5 Seller will maintain records reviewable by General Dynamics to support its certifications above.

34.6 Seller acknowledges that General Dynamics may utilize and disclose Conflict Minerals information provided by Seller in order to satisfy its disclosure obligations under the Rule.

34.7 If General Dynamics determines that any certification made by Seller under this Article 34.0 is inaccurate or incomplete in any respect, then General Dynamics may terminate this Order pursuant to the provision per Section 7.1 “TERMINATION FOR CAUSE” above.

**35.0 IMPORTED ALUMINUM** - If this Order includes Goods that include imported aluminum, Seller shall ensure such aluminum is not of Russian origin and special duties have not been paid. In the event the Seller is providing Goods that include aluminum that is of Russian origin, Seller shall pay the special duties prior to delivery to Buyer in accordance with the Presidential Proclamation 10522 on Adjusting Imports of Aluminum into the United States and shall provide Buyer with documentation of the (i) Primary country of smelt; (ii) Secondary country of smelt; and (iii) Country of cast at the time of delivery of the Products to Buyer.

**36.0 SELLER NOTICE OF DISCREPANCIES** - Seller shall immediately notify Buyer in writing when discrepancies in Seller’s process, materials, or approved inspection/quality control system are discovered or suspected which may materially affect the Items delivered or to be delivered under this Order.

**37.0 HEADINGS** - The headings used in this Order are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Order.

**38.0 COMMERCIAL PRODUCTS AND SERVICES ACQUIRED UNDER THE FEDERAL ACQUISITION REGULATION (FAR) / DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT CLAUSES**

(a) The following clauses are incorporated herein by reference:

*SELLER SHALL COMPLY WITH THE FOLLOWING FAR/DFARS AND INCLUDE THE SAME IN EACH LOWER-TIER SUBCONTRACT. THE MOST CURRENT VERSIONS OF THE FOLLOWING CLAUSES APPLY UNLESS OTHERWISE STATED. IF ANY OF THE BELOW CLAUSES ARE NOT APPLICABLE DUE TO THE NATURE OF THIS ACQUISITION OR BY THEIR EXPRESS TERMS, THEY SHALL BE OF NO FORCE OR EFFECT. In all FAR/DFARS clauses below, the term “Contractor” shall mean “Subcontractor,” the term “Contract” shall mean this “Subcontract,” and the terms “Government,” “Contracting Officer” and equivalent phrases as used in the FAR/DFARS clauses below mean Contractor and Contractor’s Subcontracts Professional, respectively. It is intended that the referenced clauses shall apply to Subcontractor in such manner as is necessary to reflect the position of Subcontractor as a Subcontractor to Contractor, to ensure Subcontractor’s obligations to Contractor and to the United States Government, and to enable Contractor to meet its obligations under its Prime Contract or Subcontract. The extent and scope of applicability to this Subcontract shall be in accordance with the terms, requirements, guidelines, and limitations stated in each clause.*

*If the Government Contracting agency is other than the Department of Defense, the applicable clauses of such Contracting agency that supplement the FAR clauses cited below are hereby incorporated by reference, and the DFARS clauses cited below would be deemed deleted.*

**FAR/DFARS Clauses - Applicable to Solicitation**

- 52.203-18 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation
- 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment
- 52.204-29 Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures
- 52.222-56 Certification Regarding Trafficking in Persons Compliance Plan (Applicable if at least \$700,000 of the value of the Order will be performed outside the United States; and the acquisition is not entirely for commercially available off-the-shelf items)
- 52.225-2 Buy American Certificate (If the Seller is supplying other than domestic end products, the required listing shall be included in the proposal submission.)
- 52.225-6 Trade Agreements Certificate (If the Seller is supplying other than U.S.-made or designated country end products, the required listing shall be included in the proposal submission. )
- 252.203-7005 Representation Relating to Compensation of Former DoD Officials
- 252.204-7008 Compliance with Safeguarding Covered Defense Information Controls
- 252.225-7000 Buy American-Balance of Payments Program Certificate (If the Seller is supplying an end product other than domestic end products or qualifying country end products, the required listing shall be included in the proposal submission. Applies in lieu of FAR 52.225-2)
- 252.204-7016 Covered Defense Telecommunications Equipment or Services—Representation
- 252.204-7017 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation

## General Dynamics Proprietary Information

252.204-7019	Notice of NIST SP 800-171 DoD Assessment Requirements (applicable if over micro purchase threshold)
252.204-7025	Notice of Cybersecurity Maturity Model Certification Level Requirements
252.225-7020	Trade Agreements Certificate (If the Seller is supplying an end product other than U.S.-made, qualifying country, or designated country end products, the required listing shall be included in the proposal submission. Applies in lieu of FAR 52.225-6.)
252.225-7046	Exports by Approved Community Members in Response to the Solicitation
252.225-7051	Prohibition on Acquisition of Certain Foreign Commercial Satellite Services
252.225-7053	Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation
252.225-7055	Representation Regarding Business Operations with the Maduro Regime
252.225-7973	Prohibition on the Procurement of Foreign-Made Unmanned Aircraft Systems--Representation
252.239-7009	Representation of Use of Cloud Computing
252.239-7017	Notice of Supply Chain Risk
252.247-7022	Representation of Extent of Transportation by Sea

### **FAR Clauses Applicable to This Order Irrespective of the Amount of the Order (Exceptions as noted).**

52.202-1	Definitions
52.203-3	Gratuities (If order exceeds the Simplified Acquisition Threshold ( <i>see</i> FAR 2.101))
52.203-6	Restrictions on Subcontractor Sales to the Government
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.(If the order exceeds \$200,000)
52.203-12	Limitation on Payments to Influence Certain Federal Transactions.(If order exceeds \$200,000)
52.203-13	Contractor Code of Business Ethics and Conduct (if this contract exceeds \$7,500,000 and the performance period is 120 days or more. All disclosures of violation of the civil False Claims Act or of the Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.)
52.203-15	Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 if the Order is funded under the Recovery Act
52.203-16	Preventing Personal Conflicts of Interest (If order exceeds the Simplified Acquisition Threshold)
52.203-17	Contractor Employee Whistleblower Rights
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
52.204-2	Security Requirements (Applies if the Work requires access to classified information)
52.204-9	Personal Identity Verification of Contractor Personnel
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (If the order exceeds \$40,000)
52.204-15	Service Contract Reporting Requirements for Indefinite-Delivery Contracts
52.204-19	Incorporation by Reference of Representations and Certifications
52.204-21	Basic Safeguarding of Covered Contractor Information Systems
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
52.204-27	Prohibition on a ByteDance Covered Application
52.204-28	Federal Acquisition Supply Chain Security Act Orders—Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts
52.204-30	Federal Acquisition Supply Chain Security Act Orders—Prohibition
52.208-8	Required Sources for Helium and Helium Usage Data
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment (if Order exceeds \$45,000)
52.209-10	Prohibition on Contracting With Inverted Domestic Corporations
52.211-15	Defense Priority and Allocation Requirements
52.215-17	Waiver of Facilities Capital Cost Of Money (Applies only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and Subcontractor did not propose facilities capital cost of money in its offer.)
52.219-8	Utilization of Small Business Concerns (If Order exceeds Simplified Acquisition Threshold)
52.222-1	Notice to the Government of Labor Disputes
52.222-3	Convict Labor
52.222-21	Prohibition of Segregated Facilities
52.222-22	Previous Contracts and Compliance Reports
52.222-26	Equal Opportunity
52.222-35	Equal Opportunity for Veterans (if Order exceeds \$200,000)
52.222-36	Affirmative Action for Workers with Disabilities (if Order exceeds \$20,000)

## General Dynamics Proprietary Information

52.222-37	Employment Reports on Veterans (if FAR 52.222-35 applies)
52.222-40	Notification of Employee Rights under the National Labor Relations Act (Applies if this contract exceeds \$10,000)
52.222-41	Service Contract Labor Standards (if subject to the Labor Standards and the contract exceeds \$2,500)
52.222-50	Combating Trafficking in Persons
52.222-51	Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (if Order exceeds \$2,500)
52.222-53	Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (if Order exceeds \$2,500)
52.222-54	Employment Eligibility Verification (if Order exceeds \$3,500)
52.222-55	Minimum Wages Under Executive Order 13658 (Applicable if FAR 52.222-41 applies and the work will be performed, in whole or in part, in the United States) (if Order exceeds \$2,500)
52.222-62	Paid Sick Leave Under Executive Order 13706
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving
52.223-23	Sustainable Products and Services
52.224-3	Privacy Training
52.225-5	Trade Agreements
52.227-14	Rights in Data - General (Non DoD only)
52.227-19	Commercial Computer Software-License (Non DoD only)
52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Applies if SELLER is a small business concern. This clause does not apply if General Dynamics does not receive accelerated payments under the prime contract. Not all agencies provide accelerated payments.)
52.233-3	Protest After Award (If the Order Exceeds the Simplified Acquisition Threshold)
52.242-5	Payments to Small Business Subcontractors
52.243-6	Change Order Accounting
52.247-64	Preference for Privately Owned U. S. Flag Commercial Vessels, (Applies only if ocean transport maybe involved.)
52.249-14	Excusable Delays

### DFARS Clauses Applicable to this Order (Exceptions as noted).

252.203-7002	Requirement to Inform Employees of Whistleblower Rights
252.203-7003	Agency Office of the Inspector General (Applies if FAR 52.203-13 applies)
252.204-7004	Antiterrorism Awareness Training for Contractors
252.204-7009	Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting. <i>(Include this clause in all contractual instruments for operationally critical support, or for which performance will involve a covered contractor information system, including agreements for commercial products and commercial services, without alteration, except to identify the parties.)</i> The Seller shall rapidly report cyber incidents to the GDMS Security Operations Center (SOC) hotline at (210) 638-7050 and directly to DoD at <a href="https://dibnet.dod.mil">https://dibnet.dod.mil</a> within 72 hours of discovery and shall rapidly report cyber incidents to Buyer's authorized Supply Chain Professional by a method(s) that ensures receipt by Buyer's authorized Supply Chain Professional within 48 hours of discovery, e.g., email, and must confirm receipt by Buyer's authorized Supply Chain Professional within that time period. The Seller shall also provide the Buyer with the incident report number, automatically assigned by DoD, as soon as practicable. In addition to the foregoing, in the event that Seller experiences a cyber incident it shall provide Buyer with a written status report, no less than monthly, detailing the remediation of the incident until such incident has been fully rectified. (This clause is not applicable to acquisitions of solely "COTS items" as defined in FAR 2.101.)
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support
252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services. In the event the Seller identifies covered defense telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, the Seller shall report at <a href="https://dibnet.dod.mil">https://dibnet.dod.mil</a> and the Buyer the information contained in (d)(2) of this clause within three business days from the date of such identification or notification. The Seller shall also provide the information required in (d)(2)(ii) of the clause to the Government and the Buyer within thirty business days of submitting the initial report required in (d)(2)(i).
252.204-7020	NIST SP 800-171 DoD Assessment Requirements (applicable if over micro purchase threshold)
252.204-7021	Contractor Compliance with the Cybersecurity Maturity Model Certification Level Requirement (Subcontractor must provide evidence of the CMMC Level it has attained (e.g., a screenshot of its relevant SPRS entry).)

## General Dynamics Proprietary Information

252.205-7000	Provision of information to Cooperative Agreement Holders (If Order exceeds \$1,500,000)
252.209-7004	Subcontracting with Firms That Are Owned or Controlled by the Government of a Country that is a State Sponsored of Terrorism (Applicable if Order Exceeds \$200,000)
252.223-7008	Prohibition of Hexavalent Chromium
252.225-7001	Buy American and Balance of Payments Program (Applies in lieu of FAR 52.225-1)
252.225-7008	Restriction on Acquisition of Specialty Metals (If the Order Exceeds the Simplified Acquisition Threshold)
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals (excluding paragraphs (d) and (e)(1))
252.225-7012	Preference for Certain Domestic Commodities
252.225-7015	Restriction on Acquisition of Hand or Measuring Tools (If Order exceeds \$150,000)
252.225-7021	Trade Agreements (Applies in lieu of FAR 52.225-5)
252.225-7036	Buy American - Free Trade Agreement - Balance of Payments Program (If Order exceeds \$25,000)
252.225-7052	Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten (If Order exceeds the Simplified Acquisition Threshold)
252.225-7054	Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation
252.225-7056	Prohibition Regarding Business Operations with the Maduro Regime
252.225-7060	Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region
252.225-7972	Prohibition on the Procurement of Foreign-Made Unmanned Aircraft Systems
252.226-7001	Utilization of Indian Organizations and Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns – DOD Contracts (If Order exceeds \$500,000)
252.239-7010	Cloud Computing Services
252.239-7018	Supply Chain Risk
252.243-7002	Request for Equitable Adjustment (If Order Exceeds the Simplified Acquisition Threshold)
252.245-7005	Management and Reporting Government Property
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System
252.246-7008	Sources of Electronic Parts

(b) In the event it is determined that the Service to be performed under this Order is not a Commercial Product or Commercial Service as defined at FAR 2.101, then Seller agrees that Buyer's General Provisions - Fixed Price (In Support of a U. S. Government Contract) [SCM-TMP-005](#) and the corresponding agency flow downs shall be applicable to this Order, in lieu of these commercial terms and conditions, effective as of the date of this Contract. Seller agrees to comply with all applicable laws, orders, rules, regulations, and ordinances.

If Buyer's contract price is reduced because of a non-commercial item determination for Item(s) provided by the Seller; then the Buyer may make a corresponding reduction, excluding Buyer added G&A, and profit or fee, in the price of this Order or may demand payment of the corresponding amounts. Seller shall promptly pay amounts so demanded.